



## **TECHNICAL AND COMPLIANCE COMMITTEE**

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### **FFA Comments on the Proposed Observer Safety Measure**

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**FFA COMMENTS ON THE PROPOSED OBSERVER SAFETY MEASURE**

Relevant draft CMM paras	FFA comments
<p>1. Commission Members, Cooperating Non-Members and Participating Territories (CCMs) shall ensure that vessels flying their flag, when operating in the WCPF Convention Area, <b>abide by all international requirements, procedures and protocols in the event that an observer dies, is missing or presumed fallen overboard</b> while embarked on their vessel. In addition, CCMs shall ensure that in such an event, vessels flying their flag shall:</p> <p>a. notify the appropriate Maritime Rescue Coordination Centre, the flag state, the observer provider and the Secretariat of the incident as soon as possible;</p> <p>b. cooperate fully in any search and rescue operation; and</p> <p>c. cooperate fully in any and all official investigations.</p>	<p><b>Objective</b> – what is this CMM seeking to achieve – to set out clear responsibilities and steps for what is to happen during emergency situations? To promote cooperation amongst all parties concerned? It would be useful to set this out clearly.</p> <p><b>Scope of application</b> – What is the scope of application of this CMM? Is it only intended to deal with flag State responsibilities as set out in para.230 of WCPFC12 Summary Record? However, NOTE paras 5 and 7 which place responsibilities on the observer providers.</p> <p>The CMM needs to state clearly that this does not take away the right of a coastal State to prosecute for violations that occurred within its waters.</p> <p>Consideration to be given to the CMM including a role for the port State for eg. to encourage port States, where a vessel has been directed to its port in any of the situations covered in this measure, to cooperate by facilitating the entry of the vessel, and to the extent possible, assisting in the investigation.</p> <p><b>Area of application</b> – the reference to “Convention Area” is not consistent with the scope of the ROP. Proposal to replace references throughout the text to “when operating in the WCPF Convention Area” with “when operating under the Commission Regional Observer Programme”.</p> <p><b>“abide by all international requirements, procedures and protocols”</b> – this is a vague reference, and it would be useful to get clarity from the US on what is being referred to here; one of which has been noted in the Preamble.</p>

	<p><b>Specific steps required</b> - this para. is intended to capture the responses in the most serious of emergency situations for observers and includes a general provision to cooperate in any search and rescue operation, <b>but does not go far enough to set out specific steps to be taken</b> – such steps are captured in the 2016 MTCs.</p> <p>Proposal to include:</p> <ul style="list-style-type: none"> <li>• <b>immediate</b> notification to the observer service provider</li> <li>• immediately cease all fishing activities</li> <li>• after activating all search and rescue operations, conducting a search immediately for at least 72 hours or as otherwise required by authorities</li> <li>• alert other vessels in the vicinity by using all available means of communication</li> <li>• whether or not the search is successful, return the vessel for further investigation to the nearest port as designated by the observer service provider</li> <li>• full report to the observer service provider and appropriate authorities on the incident</li> <li>• remaining in port for investigation until further notice</li> <li>• in the event of death of observer, ensuring the body is well-preserved for the purposes of an autopsy and investigation.</li> </ul> <p>Proposal to delete the reference to “as soon as possible” and replace with “immediately”.</p>
<p>2. In the event that an observer suffers from a <b>serious illness or injury that threatens their health or safety</b>, while on board a vessel flying their flag, when operating in the WCPF Convention Area, CCMs shall ensure that such vessels shall:</p> <p>a. take any reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel;</p>	<p>Again, the proposed CMM does not go as far as the MTCs which requires immediate cessation of fishing, allows the observer provider to direct a vessel back to port if required, and is not limited by any condition “as soon as practicable”; and requires immediate notification to the observer provider, and consultation.</p> <p>Proposal to:</p> <ul style="list-style-type: none"> <li>• delete the references to “as soon as practicable” and “as soon as possible” and</li> </ul>

<p>b. notify the appropriate Maritime Rescue Coordination Centre, the flag state, the observer provider and the Secretariat of the situation as soon as possible;</p> <p>c. as appropriate, facilitate the disembarkation of the observer to an appropriate facility for medical care, <b>as soon as practicable</b>; and</p> <p>d. cooperate fully in any and all official investigations into the cause of the illness or injury.</p>	<p>replace with “immediately”</p> <ul style="list-style-type: none"> <li>• include the requirement to immediately cease fishing and consult with the observer provider</li> <li>• include the ability of the observer provider to direct the vessel to the nearest designated port to disembark the observer for full and proper medical attention.</li> </ul>
<p>3. In the event that an observer is <b>assaulted or harassed</b> while on board a vessel flying their flag, when operating in the WCPF Convention Area, <b>to such an extent that the observer or the observer provider indicates that they wish for the observer to be removed from the vessel prior to the conclusion of the fishing trip</b>, CCMs shall ensure that such vessels shall:</p> <p>a. take action to mitigate and resolve the situation on board as soon as possible;</p> <p>b. notify the flag state and the observer provider of the situation as soon as possible;</p> <p>c. facilitate the disembarkation and replacement of the observer as quickly as possible; and</p> <p>d. cooperate fully in any and all official investigations into the incident.</p>	<p>Again, the proposed CMM does not go as far as the MTCs which requires immediate cessation of fishing, allows the observer provider to direct a vessel back to port if required, and is not limited by any condition “assaulted or harassed...to such an extent”; and requires immediate notification to the observer provider, and consultation.</p> <p>Proposal to:</p> <ul style="list-style-type: none"> <li>• delete the references to “as soon as practicable” and “as soon as possible” and replace with “immediately”</li> <li>• delete the text “to such an extent that the observer or the observer provider indicates that they wish for the observer to” and replace with “and the observer provider advises that the observer”</li> <li>• include the requirement to immediately cease fishing and consult with the observer provider</li> <li>• include the ability of the observer provider to direct the vessel to the nearest designated port to disembark the observer for full and proper medical attention.</li> </ul> <p><b>“assaulted or harassed”</b> – this phrase needs to be replaced with the wider scope of situations set out in the MTCs, the Convention and CMM 2007-01, as follows “assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of</p>

	<p>their duties”.</p> <ul style="list-style-type: none"> <li>• separate out a situation of “assault” from the other situations, and requiring that the observer is immediately disembarked at the nearest port</li> <li>• inclusion of compensation for loss of earnings for the observer whenever an early disembarkation is required for assault or any of the named situations.</li> </ul>
<p>4. In the event that an observer is <b>alleged to have been assaulted or harassed</b> while on board a vessel flying their flag, when operating in the WCPF Convention Area, <b>but the observer or the observer provider, does not seek that the observer be removed from the vessel prior to the conclusion of the fishing trip</b>, CCMs shall ensure that such vessels shall:</p> <ol style="list-style-type: none"> <li>a. take action to mitigate and resolve the situation on board as soon as possible;</li> <li>b. notify the flag state and observer provider of the situation as soon as possible; and</li> <li>c. cooperate fully in any and all official investigations into the incident.</li> </ol>	<p>The key differences here with para.3 are (i) these are “alleged” incidents of assault or harassment and (ii) in the opinion of the observer provider OR the observer, the observer is not to be removed from the vessel prior to the end of the trip.</p> <p>The inclusion of the term “alleged” is a concern as then it seems that para.3 incidents need to be proven before a return is made to port. Yet this matter will not be officially proven until the vessel returns to port for investigation. FFA Members do not want this to be an obstacle later when the observer or observer provider seeks a disembarkation.</p> <p>In addition, the sequence of steps could be clarified so that the observer provider is immediately notified and consulted first, before they can take an informed decision whether or not to disembark the observer. This may require revisiting the manner in which paras 3 and 4 are set up.</p> <p>Proposal to delete the reference to “alleged”, and including para.4(b) in the preface to this para 4.</p> <p>As noted in para.3, delete the situation of “assault” from this paragraph as it will necessitate a removal of the observer from the vessel, as explained under para.3.</p>
<p>5. In the event that during the course of a debriefing of an observer, <b>an observer provider associated with a CCM’s national</b></p>	<p>The distinction between paras.5 and 6 is who first finds out about an alleged violation – the observer provider or the flag State; however</p>

<p><b>observer program identifies an alleged violation involving an observer occurred while on board a vessel flying its flag,</b> when operating in the WCPF Convention Area, the observer provider shall notify the CCM and the Secretariat, and the CCM shall investigate any such event and take any appropriate action in response to the results of the investigation. The CCM shall notify the observer provider and the Secretariat of the results of its investigation and any actions taken.</p>	<p>the process to be followed is not reciprocal.</p> <p>This is not clearly drafted – is “associated with a CCM’s national observer program” referring to an observer provider of a flag State notifying that State. Or is it meant to refer to any observer provider identifying an alleged violation?</p> <p>If it is the latter, <b>what about the role of the observer provider in the investigation, and action to be taken? What exactly is the role of the Secretariat here, as it is also notified under this para?</b></p>
<p>6. In the event that a <b>CCM uncovers an alleged violation involving an observer while on board a vessel flying its flag,</b> when operating in the WCPF Convention Area, or is notified by the Secretariat of such an alleged violation, the CCM shall investigate any such event and take appropriate action in response to the results of the investigation. The CCM shall notify the observer provider and the Secretariat of the results of its investigation and any actions taken.</p>	<p><b>Para.5 needs to recognise that these steps are without prejudice to the ability of the observer provider to make its own investigation and take action as well as recognise the coastal State’s ability to take action for violations within its waters.</b></p> <p>Whereas para.6 requires the CCM that uncovers the alleged violation to first investigate, take appropriate action, then advise the observer provider. <b>It would be appropriate for the observer provider to be notified promptly of such alleged violation.</b></p>
<p>7. CCMs shall ensure that any observer providers associated with their national observer program:</p> <ol style="list-style-type: none"> <li>a. notify the appropriate Maritime Rescue Coordination Centre, the flag state, and the Secretariat as soon as possible in the event of the death of an observer, if an observer is missing or presumed fallen overboard;</li> <li>b. cooperate fully in any search and rescue operation;</li> <li>c. <b>cooperate fully in any and all official investigations into any incident involving an observer;</b></li> <li>d. where appropriate, facilitate the</li> </ol>	<p>Again, the observer provider is only required to notify and cooperate with the flag State, without any clear recognition of its role to also investigate and take action. As stated for para.5, this needs to be clearly recognised.</p> <p>Paras. 5 and 7 place several obligations on the observer provider, including the requirement to notify the flag State when debriefings identify alleged violations, providing the flag State with a copy of the observer report, as well as cooperate “fully” in any investigation.</p> <p>However:</p> <p>(i) as tasked by WCPFC12, the Commission Secretariat has developed the online Compliance Case file system as a mechanism,</p>

<p>disembarkation and replacement of an observer in a situation involving the serious illness or injury of that observer as soon as practicable;</p> <p>e. facilitate the disembarkation and replacement of an observer, as soon as possible, in any situation involving the assault or harassment of that observer to such an extent that the observer wishes to be removed from the vessel;</p> <p>f. <b>notify the flag state as soon as possible in the event that during debriefing or a review of observer reports an alleged violation involving an observer is identified; and</b></p> <p>g. <b>provide the flag state with a copy of the observer report in every event that involves an alleged violation involving an observer.</b></p>	<p>for providing early notice to the flag State of alleged violations; and</p> <p>(ii) sufficient details are being provided through this system to alert the flag State of the alleged violation. If further details are required, the flag State can then request these from the observer provider.</p> <p><b>On (f) and (g), the online case file system appears to be a useful tool to provide the early alert to the flag State on alleged violations against observers on their vessels. The flag State is provided with sufficient information to be made aware that an allegation has been made, and can then request further details from the observer provider.</b></p>
<p>8. CCMs shall ensure that any authorized High Seas Boarding and Inspection vessels flying their flag cooperate in the course of a high seas boarding and inspection patrol, to the greatest extent possible, in any search and rescue operation involving a WCPFC Regional Observer Programme authorized observer.</p>	<p>This appears very limiting and is inconsistent with the MTCs, which is to alert all vessels in the vicinity. This is the appropriate course of action – to reach out to all nearby vessels to assist in these emergency situations, not just flag States’ HSBI-authorized vessels.</p>
	<p>Discussion will be required on the inclusion of the references to the requirements for an Emergency Action Plan, two-way device and life-saving beacon.</p>
	<p>Discussion will be required on the minimum details for the full insurance coverage for observers. The FFA MTCs provide for minimum components to be included in the insurance:</p> <p>(i) in the event of injury or illness of the observer, full repatriation and medical costs, as applicable, where the observer is returned to port for medical reasons;</p> <p>(ii) in the event of injury or death of the</p>

	observer, to pay for the autopsy, funeral expenses, and adequate costs for medical, repatriation, loss of earnings, and other related expenses as applicable.
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